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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re J.M., A Person Coming
Under the Juvenile Court Law.

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

J.M.,

Defendant and Appellant.

B291674

Los Angeles County
Super. Ct. No. 18CCJP02678

APPEAL from orders of the Superior Court of Los Angeles
County, Martha A. Matthews, Judge. Affirmed.

Anne E. Fragasso, under appointment by the Court of
Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles,
Assistant County Counsel, and Tracey M. Blount, Senior Deputy
County Counsel, for Plaintiff and Respondent.

The juvenile court asserted jurisdiction over 13-year-old Jonathan, removed him from Father and Mother, and ordered reunification services. Father alone appeals all orders. We affirm.

Code references are to the Welfare and Institutions Code.

Each subdivision of section 300 describes a category of children subject to juvenile court jurisdiction. (§ 300.) Here, the juvenile court found section 300 described Jonathan in three ways. First, subdivision (b) described Jonathan because his “mental and emotional problems” left Mother unable to care for him. Second, subdivision (b) described Jonathan because Father’s recent violations of Mother’s restraining order, coupled with Father’s past violence against Mother, set the stage for injury to Jonathan. Third, subdivision (a) described Jonathan due to the same misconduct by Father.

On appeal, Father does not challenge the finding that Mother is unable to care for Jonathan. That uncontested finding is sufficient to establish jurisdiction. (*In re H.R.* (2016) 245 Cal.App.4th 1277, 1285–1286.) Thus, our review of the remaining jurisdictional findings, which relate to Father’s misconduct, is discretionary. (*Id.* at 1286.) We normally exercise our discretion to review the merits of such findings where they (1) form the basis of dispositional orders challenged on appeal, (2) could prejudice the party or impact current or future dependency proceedings, or (3) could have consequences beyond jurisdiction. (*In re Drake M.* (2012) 211 Cal.App.4th 754, 762–63.)

Here, Father argues we should reverse the juvenile court’s dispositional orders if the jurisdictional findings challenged by Father are erroneous. In fact, Father’s *only* attack on the dispositional orders is that they are based on improper

jurisdictional findings. So we exercise our discretion to review the findings.

Substantial evidence supports finding Father's conduct caused Jonathan to be described by section 300, subdivisions (a) and (b). Mother reported that, when she was in a relationship with Father, there were "several incidents" where Mother was "hit on the head with a gun, dragged, punched, kicked, slapped, and isolated in a room." Father was "controlling and jealous." He would "rape her in the presence of the[ir] children." He took "Jonathan at gunpoint from her" and threatened to "hurt the child if she said anything to the police." One of Jonathan's siblings said, "My dad would hit my mom, kick her, choke her, and slap her."

Father concedes domestic violence can be the basis for finding subdivision (a) describes a child. (*In re M.M.* (2015) 240 Cal.App.4th 703, 719–721.) And it is well established domestic violence can also be the basis for a finding under subdivision (b). (*In re R.C.* (2012) 210 Cal.App.4th 930, 941.) But Father argues his domestic violence cannot support a section 300 finding because he has not been violent against Mother since their relationship ended nearly a decade ago. Father's argument fails because his recent and persistent violation of Mother's restraining order puts him in Mother's vicinity, and thus creates a substantial and present-day risk of violence.

Father's most recent documented violation of Mother's restraining order occurred just three months before the juvenile court made its findings. According to Mother, Father showed up at Mother's house and "started to bang on the windows and doors." Police arrested Father outside the home. By all accounts, this incident was not the first time Father violated the

restraining order. Even Father admitted to violating the order. He gives benign excuses: he says one time he was dropping off pizza, another time his “truck got stalled in front” of the house, and yet another time he “stopped by . . . to check on the kids.” Nonetheless it was reasonable for the juvenile court to infer Father’s recurring visits to Mother’s home made future domestic violence likely.

Father cites *In re David M.*, which held previous misconduct alone does not establish substantial risk of harm under subdivision (b). (*In re David M.* (2005) 134 Cal.App.4th 822, 831, overruled on other grounds by *In re R.T.* (2017) 3 Cal.5th 622, 628–629.) The *In re David M.* parents suffered mental and substance abuse problems—which never harmed the children or risked harming the children—and the social services agency “relied on the investigation it performed” years earlier, “determined that mother was a lost cause, and simply gave up on her.” (*In re David M.*, *supra*, 134 Cal.App.4th at p. 829–832.) In this case, Father’s past misconduct is more serious, and the Department’s continuing investigation identified Father’s restraining order violations.

Father also claims the juvenile court’s findings were too speculative. For support, he cites *In re Steve W.* (1990) 217 Cal.App.3d 10, 22, which held removal was improper where it was based on speculation a mother would enter an abusive relationship in the future because she had been abused by partners in the past. Father also cites *Nahid H. v. Superior Court* (1997) 53 Cal.App.4th 1051, 1070 (*Nahid H.*), which held jurisdiction did not exist where a juvenile court relied on children’s “*perceptions of risk* rather than actual evidence of risk.” This case is different from both *In re Steve W.* and *Nahid H.*

Unlike *In re Steve W.*, the risk here emanates from the same man who has beaten Mother and taken Jonathan at gunpoint, not a hypothetical future partner. And unlike *Nahid H.*, the Department did not merely present children's perception of risk; it showed a track record of serious violence and a pattern of recent rule breaking.

Substantial evidence supported the juvenile court's findings that father's misconduct brought Jonathan within the ambit of section 300. Father asserts no other basis for reversing the juvenile court's orders.

DISPOSITION

We affirm.

WILEY, J.

WE CONCUR:

BIGELOW, P. J.

GRIMES, J.